Sprint

September 6, 2018

Via Electronic Submission

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th St., SW, Room TW-A325
Washington, DC 20554

Re: Opposition to Petitions for Reconsideration of Second Report and Order Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79

Dear Ms. Dortch:

The Petitions for Reconsideration[1] seek to upend the Commission's carefully measured action to reform the historical and environmental review processes for small cells. Those rules reduce regulatory barriers to the deployment of next generation wireless networks by streamlining the review process under the National Historic Preservation Act ("NHPA") and the National Environmental Protection Act ("NEPA"). As explained below, rescinding the *Order* will cause substantial and material harm to Sprint and would be contrary to the public interest. Accordingly, the Commission should deny the Reconsideration Petitions.

As the FCC recognized in the Second Report and Order ("*Order*), the transition to 5G networks "with their massively increased throughput and reduced latency" along with the adoption of innovative technologies fueled by the wireless economy will drive even greater demand for wireless broadband. *Order* ¶ 1. "To support these performance improvements and to operate over the available high-frequency bands, however, these next-generation wireless networks, in many areas, will increasingly need to rely on network densification, whereby spectrum is reused more frequently through the deployment of far more numerous, smaller, lower-powered base stations or nodes that are much more densely spaced." *Id.* Densification using small cells allows wireless providers to increase overall capacity while using the same amount of spectrum. *Id.* ¶ 41; Sprint Comments (June 15, 2017) at 9-10.

This technological revolution, however, faces a significant hurdle: Rules and regulations written under the old paradigm, which presume the use of a small number of larger and more

[1] Petitions for Reconsideration (Petitions) have been filed in the Commission's Rulemaking proceeding by Elaine R Unger, Cynthia Baughman, Lisa Cline and Rebecca Carol Smith. William Kenny Now, on behalf of Friends of Merrymeeting Bay, Mary Beth Brangan, Laura Allred, Joann Fox, Chuch Matzker, John M. Unger, Sue Present, Jacqueline J Shrontz, Sue Present, John Dankowski, Molly P Hauck. Pacia J. Harper, Ronald A. Fisher, Donna Desanto Ott PT, DPT, MS, FMCHC, Evelyn Savarin, Thomas Maslar, Naveen Albert, Jaclyn and David Kramer, Lucy Hackett, Andrew Hackett, Sarah Kendall, Allan D. Sikorski, Michael Kendall, Gary Swittel, Mary Kay Swittel, Leah Spitzer, Susan L. Benson, Daniel Kleiber, Susan B. Flemming, Catherine Kleiber, Molly Perkings, Hauck, Debra Albus, Michele Hertz, Alexandra Ansell, Cynthia Franklin, Michael Lipa, Rita Lipa, Victoria Sievers. Kate Kheel, Jonathan Mirin, Susan Riedeman and Pamela J. Ericson. Matt Huck, on behalf of Truth &Facts Never Lie, Becky Huck and Olemara Peters. Nancy L. Werner, on behalf of NATOA. Donald J. Evans, on behalf of PTA–FLA, Inc., and B Golomb.

intrusive facilities. These rules were already overly intrusive and unnecessary, and they now pose a particular threat to the deployment of new small cell facilities. In the *Order*, the FCC provided much-needed relief from the unnecessary and ineffective regulatory burdens created by the prior regime. As the Commission explained, "the costs of Tribal review and NEPA compliance create a significant impediment to deployment, and this impediment is only growing." *Order* ¶ 16. At the same time, the FCC determined that the Tribal review and NEPA compliance processes were largely superfluous and did not result in any protection to Tribal or historic sites. For example, the agency noted that while Sprint has "spent tens of millions of dollars completing preliminary NEPA checklists and EAs . . . every single review resulted in a finding of no significant impact (FONSI)." *Id.* ¶ 4 (citing Sprint Comments at 35). It further observed that "the benefits associated with requiring" review of small wireless facilities "are *de minimis*." *Id.* ¶ 79.

The record confirms what Sprint already knew: the burdens of NEPA and NHPA reviews produce minimal countervailing benefits for *any* wireless facilities. *Id.* The FCC's conclusions on this matter are consistent with Sprint's experience. Since the current tribal consultation system was enacted in 2004, Sprint has spent millions of dollars in tribal consultation fees. It has completed Section 106 review for, and ultimately deployed, tens of thousands of sites. Tribes indicated interest in most of these sites and charged review and "consultation" fees accordingly, but they requested zero substantive consultations and identified zero actual or potential adverse impacts to eligible historic properties. *See* Sprint Comments at 16, 27-28. Over the last several decades, Sprint has done preliminary NEPA checklists for thousands of sites, at a cost of tens of millions of dollars. Of those thousands of sites, only approximately 250 required environmental assessments, and every single one resulted in a finding of no significant impact. Sprint Comments at 35.

The Petitioners would thus struggle to show harm even from an order that completely eliminated *all* Section 106 review for wireless facilities. But the rules that Petitioners seek to rescind are far more modest than that, applying only to small cell deployments. The Commission's recognition that "[t]he world of small wireless facility deployment is materially different from the deployment of macrocells" underlines the particular absence of harm from these new rules. *See Order* ¶ 41. The prior regime was focused "primarily on the deployment of macrocells and the relatively large towers that marked the deployment of prior generations of wireless service for which site-specific preconstruction review was common." *Id.* By contrast, the vast majority of small cell deployments are in above-ground rights-of-way and on existing structures. *See, e.g.*, Sprint Comments at 28. Any ground disturbance is limited to a hole approximately 14-24 inches in diameter and 5-8 feet deep; more often, where the small cell is simply attached to an existing pole, new ground disturbance is nonexistent. *Id.*.

Although the harm to the Petitioners from preserving the status quo will continue to be minimal, at best, granting the petition and reinstating the prior regulatory regime will impose substantial harm upon wireless subscribers and providers. The record is clear that a return to the old rules will delay deployment of the infrastructure necessary to provide 5G wireless services and strengthen the wireless economy. And wireless providers themselves will be harmed by having to reinstate costly and burdensome compliance measures that they undertook extensive efforts to replace when the new rules became effective.

Eliminating the currently effective rules will cause direct delays in the provision of wireless services by reinstating a time-consuming approval process while placing a number of pending small wireless deployments in limbo. The rules that became effective on July 2 have had a substantial impact on the ability of wireless providers to approve projects faster and meet aggressive build plans. As the FCC recognized, "environmental and historic preservation review requirements necessarily impose delays above and beyond the time when facilities otherwise could begin deployment." *Order* ¶ 71. And the new rules have allowed Sprint to rapidly increase the rate of its small cell builds, which will allow it to speed the densification process and deployment of its 5G network. This pace of deployment would not have been possible under the old regime.

Under the old regime, the average cost per site with a new pole was approximately $35,000. Ex Parte Communication, Letter to Marlene Dortch from Keith Buell at 2, WT Docket No. 17-79 (Feb. 21, 2018). By removing tribal review fees and expenses from overall deployment costs, Sprint expects that the new rules will reduce the average cost per site by approximately 24 percent. *Id.* at 2. Reverting to the old rules even for the limited period during which the Petition for Review is pending would cost Sprint and other wireless providers millions in the coming months.

For the reasons stated above, Sprint respectfully requests that the Commission deny the Reconsideration Petitions and refrain from hindering the economic development driven by the new wireless economy by reinstating ineffective rules that erect needless barriers to wireless deployment.

Pursuant to Section 1.1206 of the Commission's Rules, a copy of this letter is being filed electronically in the above-referenced docket. If you have any questions, please feel free to contact me at (703) 592-2560.

Sincerely,

/s/ Keith C. Buell

Keith C. Buell
Senior Counsel